Backgrounder

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Guest Worker Programs for the 21st Century

By Philip Martin

The U.S. unemployment rate is at a 30-year low of 4.1 percent, and there are more vacant jobs than unemployed workers in many U.S. states and metro areas. As Mexican and other migrants cross the border illegally seeking U.S. jobs, there is a call both in the United States and Mexico for a guest worker program to make the employment of migrants in the United States legal and manageable, either in agriculture alone or in both agriculture and the non-farm economy.

Should the United States launch another guest worker program? The Commission on Immigration Reform in 1995 concluded that: "a large scale agricultural guest worker program...is not in the national interest...such a program would be a grievous mistake." President Clinton agreed in a June 1995 statement, which asserted that a guest worker program would increase illegal immigration, displace U.S. workers, and depress wages and working conditions.

Lessons of History

Despite these strong statements against a new guest worker program, U.S. farmers and their congressional allies, some governors and immigrant advocates, and the Mexican government would like to launch a new guest worker program. In July 1998, the U.S. Senate approved on a 68-31 vote the Agricultural Job Opportunity Benefits and Security Act of 1998 or AgJOBS program, which would have created a new guest worker program for farm workers. The House did not act, but AgJOBS remains on the Congressional agenda.

The United States has had two agricultural guest worker or Bracero programs with Mexico, and one program, H-2 and H-2A, that permits U.S. farmers to recruit foreign farmworkers in any country, although most come from the Caribbean and Mexico. None of these programs fulfilled their stated purpose: to add workers temporarily to the U.S. work force without adding permanent residents to the population, and to do so in a manner that does not adversely affect U.S. workers. Instead, the Bracero programs laid the groundwork for one of the world's great mass migrations — that from Mexico to the United States — and the H-2A program has been wracked by costly disputes.

The first Bracero program was an exception to U.S. immigration law. The 1917 Immigration Act prohibited the entry of immigrants who were "induced ...to migrate to this country by offers or promises of employment," imposed a head tax, and excluded immigrants over 16 who could not read in any language. However, with "Food to Win the War" as a motto, farmers and railroads persuaded the U.S. Department of Labor (DOL) to suspend until 1921 the head tax and the literacy test for Mexican workers coming to the United States with contracts for up to 12 months. Many of these first Braceros did not return as scheduled — there was no Border Patrol to regulate crossings until 1924 — and some U.S. employers did not pay Braceros the wages promised.

The second Bracero program was a series of agreements between Mexico and the United States under which some 4.6 million Mexicans were admitted to work on U.S. farms between 1942 and 1964. It is often argued that a legal guest worker program reduces illegal entries, but 4.9 million Mexicans were apprehended during the Bracero years (both Bracero entries and apprehensions double count individuals admitted or caught several times). The Bracero program was small during World War II — admissions peaked at 62,000 in 1944 — and rose to 445,000 in 1956, primarily to harvest cotton and other commodities in surplus.

The Mexican and U.S. governments recognized that the Bracero program also facilitated illegal immigration. Mexico pressed the United States to adopt employer sanctions to discourage illegal emigration, and

Philip Martin is a professor of agricultural and resource economics at the University of California, Davis.

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the 1951 Bracero program was approved for only six months in order to put pressure on Congress to approve sanctions. The "Texas Proviso" in the 1952 Immigration and Nationality Act, however, specifically exempted the knowing employment of unauthorized workers.

The H-2 program operated alongside the Bracero program, allowing farmers along the eastern seaboard to import Jamaican and other workers to hand cut sugar cane in Florida and pick apples in the Northeast. Like the Bracero program, farm employers who wanted to employ H-2 workers had to convince the U.S. Department of Labor that U.S. workers were unavailable at government-set wages and to provide the foreign workers with free housing and contracts that spelled out their rights and responsibilities.

The U.S. experience with foreign farm workers leads to three major lessons:

There is nothing more permanent than temporary workers. After farm employers and foreign workers become dependent on each other, the farmers do not think about alternatives to Bracero or H-2 workers, and the migrants need U.S. earnings to maintain their families.

The availability of foreign workers distorts the economy. Farmers take into account many factors when they decide whether to plant apples in remote areas of Washington or West Virginia, especially likely revenues and costs in four or five years when there are apples to pick. But they do not have to worry about the availability of pickers if there is a guest worker program. An auto executive might be fired for putting a plant in a remote area without workers; a farmer feels entitled to foreign workers to make the investment profitable.

Employers invest in lobbying to maintain the program, not in labor-saving or back-saving alternatives. Legislation authorizing farmers to hire guest workers has usually been considered a temporary bridge, a way for farmers to get crops harvested until soldiers returned from war or mechanization eliminated the need for hand workers. However, once a guest worker program is in place, farmers invest in lobbying to maintain the program, not in labor-saving and productivity-increasing alternatives.

AgJOBS

Farm employers have been pressing for an alternative guest worker program since 1964, when the Bracero program was ended in the midst of the Civil Rights movement. In the early 1980s, as the Grand Bargain of legalization and employer sanctions was moving through Congress, farmers persuaded the House in 1984 and the Senate in 1985 to approve alternatives to the H-2 program, which required employers to prove that U.S. workers were not available and to provide both U.S. and foreign workers with free housing.

Unions, churches, and immigrant advocates joined those interested in controlling illegal immigration to block the farmers' proposal. The compromise was the Special Agricultural Worker (SAW) legalization program — any unauthorized worker who performed at least 90 days of farm work in the preceding year could become a U.S. immigrant. Some 1.2 million foreigners became SAWs, and the estimated 558,000 SAWs doing farm work in 1989-90 comprised 31 percent of the farm work force.

SAWs did not suddenly abandon farm work in the 1990s — their lack of English and the recession kept most in farm work. Instead, the explanation for only half of the SAWs doing farm work in the early 1990s lies with fraud — at least half of those who became immigrants through the SAW program did not satisfy the requirement that they performed at least 90 days of farm work in 1985-86.

The exit of SAWs from the farm workforce since the early 1990s reflects a different phenomenon — falling real wages and shrinking benefits encouraged SAWs to seek non-farm jobs as the economy improved in the 1990s. The SAWs who left farm work were replaced by newly arrived unauthorized migrants. By 1997-98, it was estimated that SAWs were about 16 percent of crop workers, and that half of the farm workers on crop farms were unauthorized.

Farm labor lobbyists raised the alarm that farmers were vulnerable to the loss of their work force. What if, they speculated, the INS were to develop effective border and interior enforcement strategies? INS enforcement actions in Georgia onions, midwestern meatpacking, and Washington apple picking were widely reported in the farm press. Even though there were no financial losses to employers in these cases, they highlighted the fact that a significant share of the work force was unauthorized and could be removed with effective enforcement.

Farmers who want to maintain the labor status quo face a dilemma. They do not want to apply for H-2A guest workers because that would require them to prove that U.S. workers are not available and also to provide housing. They do not want to simply legalize currently illegal workers, because the experience with SAWs demonstrates that legalized farm workers soon leave for nonfarm jobs in a booming economy. The solution proposed in AgJOBS has two major parts:

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Quasi-legalization. Unauthorized workers who could prove that they did at least 150 days of farm work in the previous year could apply for a new probationary non-immigrant status. These workers could become U.S. immigrants if they performed at least 180 days of farm work each year for five of the next seven years.

Registries. Each state employment service (ES) would be required to create a farmworker registry that would screen workers seeking farm jobs for legal status and accept job offers from employers. If an employer requested more workers than were available in the registry, the ES would be required to issue the employer a certification to import foreign workers to make up the shortfall.

The surprise about AgJOBS is that it has divided immigrant advocates, who are normally united against guest worker proposals. Some of those who have embraced all or part of AgJOBS believe that almost anything is better than the status quo.

What Should be Done

Guest worker programs have failed wherever and whenever they have been tried. The indicators of failure are that some migrants settled, illegal migrants accompanied legal migrants, and the programs lasted longer and got larger than anticipated.

Some level of failure can be expected when governments attempt to regulate a relationship in which migrants and employers have different goals than regulators. Experience with guest workers suggests that three principles should guide any new policies:

Illegal immigration must be under control. Migrants may prefer to be unauthorized if they have to pay fees to get visas, or if they are tied to one employer. Employers can avoid wage and housing regulations, as well as the scrutiny of government agents, if they hire unauthorized workers outside the program.

Employers must have a continued incentive to seek alternatives. Under the current H-2A program, once an employer satisfies program requirements, he or she pays only administrative fees. Employers who have adapted to guest worker rules do not actively seek U.S. workers or labor-saving alternatives. For example, the Florida sugar cane industry began importing Caribbean workers to hand cut cane in 1943 and maintained that cane harvesting could not be mechanized because unique muck soils would bog down machines. But after a lawsuit was filed in the early 1990s alleging that workers guaranteed $5.30 an hour and required to cut one ton of cane per hour should be paid $5.30 a ton, rather than the $3.70 a ton they were paid, cane companies mechanized the harvest within three years.

Bilateral agreements should govern recruitment, remittances, and returns. The H-2A program gives U.S. employers complete discretion in where and how to recruit workers — employers can and do select the "best and brawniest" of foreign work forces; migrants often pay hundreds of dollars to get selected for U.S. farm jobs. The workers' home country should be involved in the guest worker program so that recruitment can be regulated, remittances used to foster job-creating growth, and worker returns facilitated.

The AgJOBS proposal does not satisfy any of these criteria. Instead, it hands a major new task to state ES offices that they are unlikely to be able to fulfill; the ES failure to register and have available to farmers legal workers will help to divert blame for "labor shortatges" from farmers to the government. The complex legalization program, with its requirements for continued farm work, is likely to foster both exploitation and fraud. Workers wanting to satisfy the five-year requirement to become immigrants are not likely to complain and risk firing. Farm labor contractors, on the other hand, can develop a lucrative sideline issuing real and false letters of employment to probationary AgJOBS workers.

Labor-intensive agriculture continues to expand under the assumption that government will make farm workers available when and where they are needed. Farm workers remain among the poorest U.S. workers, with most employed seasonally and earning $5,000 to $10,000 a year. Farm labor contractors are expanding their roles, serving as shock absorbers in a labor market rife with labor and immigration law violations.

But the solution to farm worker problems is not a guest worker program that leaves the farm labor system unchanged. Even most farmers concede that history would likely repeat itself if illegal immigration were to be controlled and there were no new guest worker program. Wages would rise, there would be a rapid adoption of labor-saving machinery and better ways to manage now more expensive workers, and some crops might migrate to lower-wage countries.

Government policy should push agriculture toward a sustainable 21st century future, not permit it to revert to a 20th century "Harvest of Shame" past.

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Guest Worker Programs for the 21st Century

Guest or foreign worker programs aim to add workers to the labor force without adding permanent residents to the population. In FY 1996 (the most recent data available), about 395,000 foreign workers were admitted under the 14 major nonimmigrant visa categories (these INS data double count individuals entering the United States several times in one year). Another 640,000 foreigners were admitted as students or exchange visitors, a large but unknown number of whom were employed by U.S. employers for wages. Many of these nonimmigrants remain in the United States for more than one year, so in 1998 the number of legal nonimmigrant workers may have been over one million in labor force of 138 million, including 132 million employed workers.

In addition to these legal nonimmigrant workers, there are another four to six million unauthorized workers employed in the United States, some full-time, others seasonally.

Should the United States launch another gust worker program? This *Backgrounder* explores the history of these programs and explains why guest-worker programs are are not a solution to the farm labor system's problems.

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